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TITLE: ECONOMIC TORT

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**QUESTION**

Discuss the relevance of passing off as a form of economic tort in the 21st century Nigeria. Use NALT guidelines for footnotes , you should also include a bibliography at the end

Tines new Roman font size 12 , 1.5 spacing , maximum of 5 pages

**ABSTRACT**

The economic tort for too long has been under theorized also under explored by academics and under explored by academics and judiciary alike also in recent years claimant have exploited the resulting chaos by attempting to use the economic tort in ever more exotic ways . We would discuss about economic tort and focussing on passing off. Economic tort involves various general economic tort including breach of contract, the unlawful means tort, intimidation the conspiracy tort and the misrepresentation economic tort including deceit, malicious falsehood and passing off and their rationale

This work takes a bifurcated view of the concept of goodwill to show that throughout the development of the law of passing off , claimants are concerned with the protection not only of their trade at hand, and with distinguished it from rival traders. Claimants are concerned with the protection of their control over the aspect of their goodwill which garners their trade going forward .. The courts are treating the law of passing off with coherence and yet with relevance to contemporary commercial and social practices.

INTRODUCTION

Economic tort are also known as business torts . Economic tort offer protection trade or business form acts which the law considers to be unacceptable. Although it is a fundamental element of business that businesses compete with one another and therefore to this extent, one business may succeed to the disadvantage of another; the economic tort seeks to ensure that businesses are protected from acts of unacceptable interference.

8 There are three main categories of economic tort:

1. PROCURING A BREACH OF CONTRACT: this is known as one of the parts of the economic tort this is committed where a person or entity knowingly and intentionally causes damage to another by interfering with their contractual relations or rights . The tort is useful where the contract breaker is difficult to sue or lacks sufficient funds to satisfy a judgment . Procuring a breach of contract is a tort of secondary liability. Without primary liability on the part of the contract breaker whose breach of contract the defendant has induced or procured there can be no such secondary tortious liability on the part of the defendant

**Birch v Lloyd** .

1. CAUSING LOSS BY UNLAWFUL MEANS : this is sometimes referred to as unlawful interference with economic interests exist where the defendants interfere with an economic interest of the claimant by unlawful means , the object and intention of which use to cause loss to the claimant and loss is caused to the **OBG v Allan future v federation internationale.** Liability for causing loss by unlawful means occurs where there is intentional causing of damage by unlawfully interfering in the freedom of a third party to deal with the claimant . The tort of unlawful means comprises three elements : The use of lawful means towards comprises three elements: The use of unlawful means towards a third party ; which is actionable by that third party , or would if they suffered loss and intention to injure the claimant
2. CONSPIRACY : An agreement between two or more persons either to use means, whether lawful or otherwise, the predominant or real purpose of which is to injure the claimant or to use unlawful means to damage the claimant. Conspiracy to commit an economic tort is designed to allow a claimant to bring a case against a group of malicious plotters who would otherwise avoid liability , because their individual actions are not in and of themselves tortious , or because only one of them actually took the tortious act.

This article is mainly for the purpose of explaining the relevance of passing off as a form of economic tort in the 21st century Nigeria.

**ARTICLE**.

**PASSING OFF**

Passing off is sometimes referred to sometimes as a the law of of common law trademarks because so often the goodwill and reputation of the business is associated with its trademarks. It recognises that there may be right in a business with unregistered trademarks by virtue of substantial goodwill and reputation . Passing off is a judge made law . A passing off action is essentially an action in tort. The purpose of this tort is to protect the commercial goodwill and to ensure that people’s business reputation are not exploited . What is protected is an action of passing off is an economic asset . The plaintiffs must establish that his business or goods have acquired the reputation he alleges and this can be done by showing that a substantial proportion of people who are likely to become purchasers of the goods of the kind in question associate the name with them. This must vary according to the fact .

A misrepresentation made by a trader in the course of trade to prospective customers of his or ultimate consumers of good s and services supplied by him, which is calculated to injure the business or goodwill of another trader ( in the sense that this is a reasonably foreseeable consequence) and which causes actual damage to a business or goodwill of the trader by whom the action is brought or will probably do so.

However the law of passing off prevents one person from misinterpreting his or her goods or services as being goods or services of the claimant and also prevents one person from holding out his or her goods or services as having some association or connection with the plaintiff when this is not true . This involves misleading the public into falsely believing that the brand being projected was the same as a well known brand is a wrong and is known as the tort of passing off.

In a passing off action, the plaintiff must prove that there is a similarity in the trade name and trade marks and that the defendants is passing off his goods as those of the plaintiff . **Remedies** could include injunction or damage or both. Damage or likelihood of damage form the core all passing off actions . The concepts of reverse passing off and extended passing off also had significance. Extended passing off consists of those cases where misrepresentation of a particular quality of a product or services caused harm to the plaintiffs goodwill. A famous case is **Diageo north America Inc v intercontinental brands.** Where the defendants marketed a drink named “ vodkat” which was actually not vodka, but the marketing did not actually make it clear that it wasn’t so . The plaintiff were the biggest manufacturers of vodka and they filed a suit against the defendant for passing off and it was held so . If a defendant markets the products made by the plaintiff as the product of the defendant, the tort committed is known as reverse passing off .

**To prove passing off**

**See boots company limited v United Niger imports limited**

1. Proof that the name mark sign which the plaintiff claims ownership has become distinctive of his goods and is regarded by a substantial number of the public or person involved in a trade in the relevant market as coming from a particular source
2. That the defendant who are engaged in a common field have used a name , Mark, sign so resembling to the plaintiffs that is likely or calculated to deceive or cause confusion in the minds of the common customer.
3. That the use of the name, Mark, sign is likely to cause or has caused injury, actual or probable to the goodwill of the plaintiffs business .

**Remedies in a passing off action**

* 1. Injunction: order of the court to prohibit or suspend the use of a mark
  2. Damages : it has been established through decided cases that a successful litigant in a passing action is entitled to damages.
  3. Delivery up for destruction of infringing goods : this is usually claimed where physical goods are involved
  4. Anton pill orders : this is an added for inspection and delivery up of infringing materials in the possession or control of an infringer.
  5. Account of profit

**Defences available to a defendant in a passing off action**

1. Consent of the plaintiff to the use of the name , Mark, sign or slogan
2. Indistinct name, Mark sign and slogan of the plaintiff
3. That the plaintiffs name, Mark, sign hand slogan has become common place.
4. Dissimilarities in the mark of the plaintiff and defendant.
5. Innocent usage of the Plaintiff name

Let’s now focus on the **RELEVANCE of passing off as a form of economic tort in 21st century** .

Firstly, we should be aware that the passing off is a common law tort that was established long before trade marks became registerable .it was originally intended to protect traders by allowing them to bring action against a trader attempting to ride off the back of their established reputation ( goodwill) by using a similar mark or get up as their own. However for an action of passing of to succeed three requirement must be established; goodwill, A misrepresentation and resulting damage .

Secondly one of the main relevance or purpose of passing off in these times is to prevent one trade from damaging or exploiting the goodwill and reputation built up by another. The principle is that no man is entitled to represent his goods or his business as that of another. It I’d therefore our recommendation that the necessary framework for passing off action be strengthened to defend the goodwill and reputation of businesses.

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